

AMENDED IN SENATE APRIL 30, 2012

AMENDED IN SENATE APRIL 25, 2012

AMENDED IN SENATE APRIL 16, 2012

AMENDED IN SENATE APRIL 9, 2012

SENATE BILL

No. 1172

Introduced by Senator Lieu

February 22, 2012

An act to add Article 15 (commencing with Section 865) to Chapter 1 of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1172, as amended, Lieu. Sexual orientation change efforts.

Existing law provides for licensing and regulation of various professions in the healing arts, including physicians and surgeons, psychologists, marriage and family therapists, educational psychologists, clinical social workers, and licensed professional clinical counselors.

This bill would prohibit psychotherapists, as defined, from performing sexual orientation change efforts, as defined, in the absence of informed consent of the patient. The bill would require a specified statement to be included on the informed consent form. Informed consent would not be effective for patients under 18 years of age. The bill would provide for a cause of action against psychotherapists by patients, former patients, or certain other persons in specified cases.

The bill would also declare the intent of the Legislature in this regard.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) An individual's sexual orientation, whether homosexual, bisexual, or heterosexual, is not a disease, disorder, illness, deficiency, or shortcoming. The major professional associations of mental health practitioners and researchers in the United States have recognized this fact for nearly 40 years.

(b) Sexual orientation change efforts *can* pose critical health risks to lesbian, gay, and bisexual people, including confusion, depression, guilt, helplessness, hopelessness, shame, social withdrawal, suicidality, substance abuse, stress, disappointment, self-blame, decreased self-esteem and authenticity to others, increased self-hatred, hostility and blame toward parents, feelings of anger and betrayal, loss of friends and potential romantic partners, problems in sexual and emotional intimacy, sexual dysfunction, high-risk sexual behaviors, a feeling of being dehumanized and untrue to self, a loss of faith, and a sense of having wasted time and resources. This is documented by the American Psychological Association's Task Force on Appropriate Therapeutic Responses to Sexual Orientation in its 2009 Report of the Task Force on Appropriate Therapeutic Responses to Sexual Orientation.

~~(c) Recognizing that there is no evidence that any type of psychotherapy can change a person's sexual orientation and that sexual orientation change efforts may cause serious and lasting harms, the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, and the American Academy of Pediatrics uniformly oppose efforts to change the sexual orientation of any individual.~~

(c) (1) *The American Psychological Association, in its 1997 Resolution on Appropriate Therapeutic Responses to Sexual Orientation, states: "We oppose portrayals of lesbian, gay and bisexual youth and adults as mentally ill due to their sexual orientation and support the dissemination of accurate information about sexual orientation and mental health and appropriate interventions in order to counteract bias that is based in ignorance of unfounded beliefs about sexual orientation."*

(2) *The American Psychological Association also convened a Task Force on Appropriate Therapeutic Responses to Sexual Orientation. The task force conducted a systematic review of peer-reviewed journal literature on sexual orientation change efforts. It concluded: “Efforts to change sexual orientation are unlikely to be successful and involve some risk of harm, contrary to the claims of sexual orientation change efforts practitioners and advocates.”*

(d) *The American Psychiatric Association published a position statement in March of 2000 in which it stated: “The American Psychiatric Association opposes any psychiatric treatment such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the a priori assumption that a patient should change his/her sexual homosexual orientation.”*

(e) *The American School Counselor Association’s position statement on professional school counselors and lesbian, gay, bisexual, transgendered, and questioning (LGBTQ) youth states: “It is not the role of the professional school counselor to attempt to change a student’s sexual orientation/gender identity but instead to provide support to LGBTQ students to promote student achievement and personal well-being. Recognizing that sexual orientation is not an illness and does not require treatment, professional school counselors may provide individual student planning or responsive services to LGBTQ students to promote self-acceptance, deal with social acceptance, understand issues related to coming out, including issues that families may face when a student goes through this process and identify appropriate community resources.”*

(f) *The American Academy of Pediatrics in 1993 published an article in its journal, Pediatrics, stating: “Therapy directed at specifically changing sexual orientation is contraindicated, since it can provoke guilt and anxiety while having little or no potential for achieving changes in orientation.”*

(g) *The American Medical Association’s Council on Scientific Affairs prepared a report in 1994 in which it stated: “Aversion therapy (a behavioral or medical intervention which pairs unwanted behavior, in this case, homosexual behavior, with unpleasant sensations or aversive consequences) is no longer recommended for gay men and lesbians. Through psychotherapy,*

1 *gay men and lesbians can become comfortable with their sexual*
2 *orientation and understand the societal response to it.”*

3 *(h) The National Association of Social Workers prepared a 1997*
4 *policy statement in which it stated: “Social stigmatization of*
5 *lesbian, gay and bisexual people is widespread and is a primary*
6 *motivating factor in leading some people to seek sexual orientation*
7 *changes. Sexual orientation conversion therapies assume that*
8 *homosexual orientation is both pathological and freely chosen.*
9 *No data demonstrates that reparative or conversion therapies are*
10 *effective, and, in fact, they may be harmful.”*

11 ~~(d)~~
12 *(i) Minors who experience family rejection based on their sexual*
13 *orientation face especially serious health risks. In one study,*
14 *lesbian, gay, and bisexual young adults who reported higher levels*
15 *of family rejection during adolescence were 8.4 times more likely*
16 *to report having attempted suicide, 5.9 times more likely to report*
17 *high levels of depression, 3.4 times more likely to use illegal drugs,*
18 *and 3.4 times more likely to report having engaged in unprotected*
19 *sexual intercourse compared with peers from families that reported*
20 *no or low levels of family rejection. This is documented by Caitlyn*
21 *Caitlin Ryan et al. in their article entitled Family Rejection as a*
22 *Predictor of Negative Health Outcomes in White and Latino*
23 *Lesbian, Gay, and Bisexual Young Adults (2009) 123 Pediatrics*
24 *346.*

25 ~~(e)~~
26 *(j) California has a compelling interest in protecting the lives*
27 *and health of lesbian, gay, and bisexual people.*

28 SEC. 2. Article 15 (commencing with Section 865) is added
29 to Chapter 1 of Division 2 of the Business and Professions Code,
30 to read:

31
32 Article 15. Sexual Orientation Change Efforts
33

34 865. For the purposes of this article, the following terms shall
35 have the following meanings:

36 ~~(a)–~~
37 ~~“Informed~~

38 *(a) “Informed consent” means consent that is voluntarily*
39 *provided in writing by a patient to a psychotherapist with whom*
40 *the patient has a therapeutic relationship. The informed consent*

1 must explicitly manifest the patient's agreement to sexual
2 orientation change efforts and include a statement as set forth in
3 Section 865.1. Consent that is provided as a result of therapeutic
4 deception or duress or coercion is not informed consent.

5 (b) "Psychotherapist" means a physician and surgeon
6 specializing in the practice of psychiatry, a psychologist, a
7 psychological assistant, a marriage and family therapist, a
8 registered marriage and family therapist, intern, or trainee, an
9 educational psychologist, a licensed clinical social worker, an
10 associate clinical social worker, a licensed professional clinical
11 counselor, or a registered clinical counselor, intern, or trainee.

12 (c) "Psychotherapy" means the professional assessment,
13 evaluation, treatment, or counseling of a mental or emotional
14 illness, symptom, or condition by a psychotherapist.

15 (d) "Sexual orientation change efforts" means psychotherapy
16 aimed at altering the sexual or romantic desires, attractions, or
17 conduct of a person toward people of the same sex so that the
18 desire, attraction, or conduct is eliminated or reduced or might
19 instead be directed toward people of a different sex. It does not
20 include psychotherapy aimed at altering sexual desires, attractions,
21 or conduct toward minors or relatives or regarding sexual activity
22 with another person without that person's consent.

23 (e) "Therapeutic deception" means a representation by a
24 psychotherapist that sexual orientation change efforts are endorsed
25 by leading medical and mental health associations or that they can
26 or will reduce or eliminate a person's sexual or romantic desires,
27 attractions, or conduct toward another person of the same sex.

28 (f) "Therapeutic relationship" means the relationship that exists
29 during the time the patient receives psychotherapy.

30 (g) "Leading medical and mental health associations" means
31 the American Psychiatric Association, the American Psychological
32 Association, the American Counseling Association, the National
33 Association of Social Workers, *the American Association for*
34 *Marriage and Family Therapy*, and the American Academy of
35 Pediatrics.

36 865.1. (a) No psychotherapist shall engage in sexual orientation
37 change efforts without first obtaining the patient's informed consent
38 to therapy as prescribed in subdivision (b).

39 (b) To obtain informed consent, a treating psychotherapist shall
40 provide a patient with a form to be signed by the patient that

1 provides informed consent. The form shall include the following
2 statement *in size 14 font*:

3
4 “Having a lesbian, gay, or bisexual sexual orientation is not a
5 mental disorder. ~~There is no scientific evidence that any types of~~
6 ~~therapies are effective in changing a person’s sexual orientation.~~
7 Sexual orientation change efforts *have not been shown to be safe*
8 *or effective and can, in fact, be harmful.* The risks include, but are
9 not limited to, depression, anxiety, ~~and~~ self-destructive behavior,
10 *and suicide.*

11 ~~Medical and mental health associations that oppose the use of~~
12 ~~sexual orientation change efforts include the American Medical~~
13 ~~Association, the American Psychological Association, the~~
14 ~~American Psychiatric Association, the National Association of~~
15 ~~Social Workers, the American Counseling Association, the~~
16 ~~American Academy of Pediatrics, and the American Association~~
17 ~~for Marriage and Family Therapy.”~~

18 *The American Psychological Association convened a Task Force*
19 *on Appropriate Therapeutic Responses to Sexual Orientation and*
20 *it concluded:*

21 “*Efforts to change sexual orientation are unlikely to be*
22 *successful and involve some risk of harm, contrary to the claims*
23 *of sexual orientation change efforts practitioners and advocates.”*

24 *The American Academy of Pediatrics states:*

25 “*Therapy directed at specifically changing sexual orientation*
26 *is contraindicated, since it can provoke guilt and anxiety while*
27 *having little or no potential for achieving changes in orientation.”*

28 *The American Medical Association’s Council on Scientific Affairs*
29 *prepared a report in which it stated:*

30 “*Aversion therapy (a behavioral or medical intervention which*
31 *pairs unwanted behavior, in this case, homosexual behavior, with*
32 *unpleasant sensations or aversive consequences) is no longer*
33 *recommended for gay men and lesbians. Through psychotherapy,*
34 *gay men and lesbians can become comfortable with their sexual*
35 *orientation and understand the societal response to it.”*

36 *The National Association of Social Workers states:*

37 “*Social stigmatization of lesbian, gay and bisexual people is*
38 *widespread and is a primary motivating factor in leading some*
39 *people to seek sexual orientation changes. Sexual orientation*
40 *conversion therapies assume that homosexual orientation is both*

1 *pathological and freely chosen. No data demonstrates that*
2 *reparative or conversion therapies are effective, and, in fact, they*
3 *may be harmful.”*
4

5 865.2. (a) Under no circumstances shall a patient under 18
6 years of age undergo sexual orientation change efforts, regardless
7 of the willingness of a patient’s parent, guardian, conservator, or
8 other person to authorize such efforts.

9 (b) The right to refuse sexual orientation change efforts is not
10 waived by giving informed consent and that consent may be
11 withdrawn at any time prior to, during, or between sessions of
12 sexual orientation change efforts.

13 (c) Any act of duress or coercion by any person or facility shall
14 invalidate the patient’s consent to sexual orientation change efforts.

15 865.3. (a) (1) A cause of action may be brought against a
16 psychotherapist by a patient, former patient, or deceased former
17 patient’s parent, child, or sibling if the sexual orientation change
18 efforts were conducted without first obtaining informed consent
19 or by means of therapeutic deception, or if the sexual orientation
20 change efforts were conducted on a patient who was under 18
21 years of age at any point during the use of the sexual orientation
22 change efforts.

23 (2) The patient, former patient, or deceased former patient’s
24 parent, child, or sibling may recover actual damages, or statutory
25 damages in the amount of five thousand dollars (\$5,000),
26 whichever is greater, in addition to costs and reasonable attorney’s
27 fees.

28 (3) The time for commencement of the action shall be within
29 eight years of the date the patient or former patient attains the age
30 of majority or within five years of the date the patient, former
31 patient, or deceased former patient’s parent, child, or sibling
32 discovers or reasonably should have discovered that the patient
33 was subjected to sexual orientation change efforts in violation of
34 this article.

35 (b) Nothing in this article precludes or limits the right of a
36 patient, former patient, or deceased former patient’s parent, child,
37 or sibling to bring a civil action against a psychotherapist arising
38 from other legal claims.

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